

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:10-CV-00591-FL

BOYKIN ANCHOR COMPANY, INC.,

Plaintiff,

v.

AT&T CORP., LARRY WONG, AT&T
SERVICES, INC., AT&T TELEHOLDINGS,
INC., AMERITECH SERVICES, INC., and
AT&T, INC.,

Defendants.

**MOTION TO DISMISS
OF AT&T CORP.**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, AT&T Corp., by and through undersigned counsel, respectfully moves to dismiss the Amended Complaint against it for failure to state a claim upon which relief can be granted.

The grounds for this Motion are set forth in the accompanying Memorandum, the pleadings and papers previously filed with this Court, and any other matters that may be presented to the Court at any hearing on the Motion.

In support of this Motion, AT&T Corp. states as follows:

1. Plaintiff Boykin Anchor Company, Inc. ("Boykin") filed suit in North Carolina state court on November 19, 2010 naming Larry Wong and AT&T Corp., and served defendants with the summons and complaint on or about November 29, 2010. *See* Dkt. 1, Ex. C.
2. Defendants properly removed the suit to this Court on December 29, 2010. *See* Dkt. 1.

3. Defendants informed Plaintiff it had filed suit against the wrong corporate entity, and confirmed that AT&T Services, Inc. was Larry Wong's employer at the time of his retirement and that AT&T Services, Inc. should have been named in the suit. *See* Dkt. 13.

4. Rather than dismissing AT&T Corp. as a party, on January 21, 2010, Plaintiff filed an Amended Complaint naming AT&T Services, Inc. as well as three of the parent companies that hold an interest in AT&T Services, Inc. Plaintiff also added a new claim for relief under the Lanham Act, 15 U.S.C. §1125(a)(1)(B). *See* Dkt. 10.

5. On February 4, 2001, the Court granted a motion for an extension of time for AT&T Corp. and Larry Wong to answer or otherwise respond to the Amended Complaint through and including February 15, 2011, which is also the deadline for AT&T Services, Inc. to answer or otherwise respond based upon its agreement to accept service as of January 25, 2011. *See* Dkt. 16.

6. The Amended Complaint fails to set forth even a single particularized allegation against AT&T Corp., stating only its corporate citizenship, that AT&T Corp. is registered to do business in North Carolina, and that AT&T Corp. is a subsidiary of AT&T, Inc.

7. AT&T Corp.'s only connection to this suit is that it is a sister entity of AT&T Services, Inc. Without question, subsidiaries are not liable for the actions of other subsidiaries.

8. Moreover, generalized allegations against "all defendants" or of concerted action against all defendants are not sufficient to survive a motion to dismiss, without allegations that are specific to each defendant.

9. If not all claims are dismissed against AT&T Corp., AT&T Corp. seeks to join the motion of AT&T Services, Inc. and Larry Wong moving to dismiss the Lanham Act claim

(Count II), the claims for negligence and gross negligence (Counts III and IV), and the claim for libel (in part) (Count V). AT&T Corp. incorporates the legal authority and argument made in support of that motion as if fully set forth in support of this Motion.

WHEREFORE, AT&T Corp. respectfully requests that the Court:

1. Dismiss the Amended Complaint against Defendant AT&T Corp.
2. Award such just and other relief the Court deems appropriate.

Respectfully submitted, this 15th day of February, 2011.

KILPATRICK TOWNSEND & STOCKTON LLP

/s/ Hayden J. Silver III

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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This the 15th day of February 2011.

/s/ Hayden J. Silver, III
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